

Joseph D. O'Sullivan SB # 67055  
LAW OFFICES OF JOSEPH D. O'SULLIVAN  
1500 - 20<sup>TH</sup> STREET  
SAN FRANCISCO, CA 94107  
415-920-0423  
415-920-0427 Fax

E-filing

FILED  
06 MAR -3 PM 3:40  
RICHARD W. WILKINS  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Attorneys for Nathan Gardner

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

NATHANIEL GARDNER

Plaintiff,

vs.

THE UNITED STATES DEPARTMENT  
OF JUSTICE; THE DRUG  
ENFORCEMENT ADMINISTRATION;  
and THE PERSON(S) CURRENTLY ON  
RECORD TITLE TO 1955 FORD  
THUNDERBIRD VIN. # P5FH235863,

Defendants

CV NO 08

1248

VRW

COMPLAINT FOR DAMAGES AND THE  
RETURN OF PROPERTY

DEMAND FOR A JURY TRIAL

PLAINTIFF ALLEGES AS FOLLOWS:

INTRODUCTION AND JURISDICTION

1. COMES NOW, Nathaniel Gardner, and he brings this action under 28 U.S.C. 1331 and 5 U.S.C. 701 et seq. It asks for the return of properties taken by defendant from plaintiff without due process of law as guaranteed by the Fifth Amend, U.S. Const. This action demands monetary damages, the return of property in fact or in species, in addition to any additional compensation deemed proper by the court. The Plaintiff demands a jury trial.
2. The defendants are the United States Department of Justice, and the United States Drug Enforcement Administration, both governmental entities and divisions of the United States of America. The Drug Enforcement Agency is a division of the United States Department of Justice.

Complaint for Damages  
and Cancellation of Sale/Transfer

Page1

3. This actions claims that two administrative forfeitures undertaken by the Defendant in December 2005 and March 2006, directed against the possessions of the Plaintiff in the Federal District of Norther California were done so with inadequate due process of law.

#### HISTORY OF THE CASE

4. On August 9, 2005 a joint task force of Drug Enforcement Administration (DEA) ar d San Mateo County Narcotics Task Force (SMCNTF) agents raided the home Nathaniel Willie Gardner.

5. Mr. Gardener's home is a single family dwelling located at 1396 Camellia Drive, East Palo Alto, CA, although Mr. Gardner resides at the residence at the time of the raid there was no one home.

6. The DEA acknowledges that during the raid the following items were removed from the residence as follows:

A. 1955 Ford T-Bird;

B. U.S. Currency \$8,340.00;

7. At no time prior to or subsequent to the raid did Mr. Gardner receive any communication from the DEA with regards to the raid, the seizure of his property or forfeiture procedures involving his property.

8. In a letter from the DEA dated October 19, 2006, Mr. Gardener is informed and believes that the forfeiture of his property was commenced by the Defendant on the 1<sup>st</sup> of December , 2005 and the 3<sup>rd</sup> of March 2006 respectively. Plaintiff did not become aware of the forfeitures until on or about the 21<sup>st</sup> day of October 2006.

9. In their October 19, 2006 letter the DEA provided information which indicated tha' it made one single attempt to notify Plaintiff of the seizure of his property, and that was a single certified mailing of a notice of seizure to Plaintiff at his home address. The DEA admits that "the notice letter was returned to the DEA".

10. Until Plaintiff received the October 2006 letter he had no way of determining which of his

possessions the DEA had taken action against, and which of his possessions it had not.

11. Plaintiff is informed and believes that the defendant DEA caused the possessions of the plaintiff to be converted, sold, assigned or transferred, against the plaintiff's true and legal interest, and that the defendants, and each of them, did so without affording plaintiff the full due process of law guaranteed him under the U.S. Constitution. Plaintiff has lost the said property, as well as the use and enjoyment of the property which is the subject of this suit, and he is entitled to damages therefore.

12. Plaintiff is informed and believes that his 1955 Ford Thunderbird is in the possession and control of a person or persons unknown, but who shall be identified in this complaint as defendant(s) "THE PERSON(S) CURRENTLY ON RECORD TITLE TO 1955 FORD THUNDERBIRD VIN. # P5FH235863."

13. Plaintiff's property was taken from his home in East Palo Alto California, where he resided prior to the raid, after the raid and at the time of the filing of this complaint.

14. The defendant receives all of his mail in a normal and regular manner, at his home in East Palo Alto, he receives his monthly bills, and other personal correspondences there regularly.

15. Plaintiff was not arrested nor was he charged with any crime in connection with the raid or anything seized as a result of the raid.

16. The Defendant had easy and ready access to Plaintiff and to Plaintiff's mailing address during the period when the providing notice was required.

17. Because the Defendants had actual knowledge of the plaintiff's true and correct mailing address, and because the defendants, only attempted to mail one certified letter that was returned unsigned, the defendants exhibit bad faith when they transferred and converted the plaintiff's property without doing more to put him on actual or constructive notice of the defendants intent to forfeit his property as herein alleged.

1 18. While having easy and ready access to the proper physical and mailing address of Plaintiff,  
2 the Defendant ignored this knowledge and made only one attempt to provide Plaintiff with  
3 notice which they were aware had failed.

4 **FIRST CAUSE OF ACTION**  
5 **[Due Process Violations]**  
6 Item: 1955 Ford Thunderbird ,  
7 DEA case Number R3-05-0037;  
8 Asset ID Number 05-DEA-456249

9 19. Plaintiff refers to and incorporates all allegations 1 through 18 stated above.

10 20. A notice of forfeiture was allegedly mailed by The DEA to Plaintiff at 1396 Carmellia  
11 Drive East Palo Alto, CA 94303, Notice was reportedly returned to sender without an  
12 accepting signature.

13 21. No further attempts were made by the DEA to notify Plaintiff of the seizure or that it would  
14 convert the said property. Plaintiff did not receive notice regarding seizure or forfeiture of  
15 1955 Ford Thunderbird , DEA case Number R3-05-0037; Asset ID Number 05-DEA -  
16 456249.

17 22. Without proper due process of law, the defendants, and each of them, caused the above  
18 automobile to be sold to THE PERSON(S) CURRENTLY ON RECORD TITLE TO 1955  
19 FORD THUNDERBIRD VIN. # P5FH235863, an unknown person who plaintiff will seek  
20 to have included in this case as a defendant once his or her identifying information is  
21 ascertained. This defendants' acts and omissions wrongfully converted the said property  
22 from the plaintiff, and caused him damages.

23 23. Plaintiff seeks to have this transaction cancelled and rescinded as it was conducted without  
24 authority under the law, and to have lawful title restored to plaintiff.

25 **WHEREFORE, PLAINTIFF PRAYS FOR DAMAGES AS HEREINAFTER**  
26 **REQUESTED.**



**SECOND CAUSE OF ACTION**  
**[Due Process Violations]**  
**Item: \$8,500 cash ,**  
**DEA case Number R3-05-0037;**  
**Asset ID Number 05-DEA-456253.**

24. Plaintiff refers to and incorporates all allegations 1 through 18 stated above.

25. A notice of forfeiture was allegedly mailed by The DEA to Plaintiff at 1396 Carmellia Drive East Palo Alto, CA 94303, Notice was reportedly returned to sender without an accepting signature.

26. No further attempts were made by the DEA to notify Plaintiff of the seizure or that it would convert the said property. Plaintiff did not receive notice regarding seizure or forfeiture of \$8,500 cash , DEA case Number R3-05-0037; Asset ID Number 05-DEA-456253.

27. As a result of the above due process violations of the DEA, plaintiff has been caused damages.

**WHEREFORE PLAINTIFF PRAYS FOR DAMAGES AS HEREINAFTER**  
**REQUEST:**

**THIRD CAUSE OF ACTION**  
**[Cancellation of Transaction, and Request for Return of Property]**  
**Item: 1955 Ford Thunderbird ,**  
**DEA case Number R3-05-0037;**  
**Asset ID Number 05-DEA-456249**

28. Plaintiff refers to and incorporates all allegations 1 through 18 stated above.

29. Plaintiff is informed and believes that said 1995 Ford Thunderbird was sold or transferred, without proper due process of law, to the unknown persons or persons identified herein as THE PERSON(S) CURRENTLY ON RECORD TITLE TO 1955 FORD THUNDERBIRD VIN. # P5FH235863. Plaintiff will seek to have included in this case as a defendant once his or her identifying information is ascertained. This action converted the said property from the plaintiff, and caused him damages.

30. Plaintiff seeks to have this transaction cancelled and rescinded as it was conducted without authority under the law, and to have lawful title restored to plaintiff.

31. Plaintiff requests an order of this court requiring all defendants to hold said 1955 Ford Thunderbird in trust pending a final resolution of this case, and to issue an order requiring the defendants to restore said automobile to the plaintiff.

WHEREFORE, PLAINTIFF PRAYS FOR DAMAGES AS FOLLOWS:

1. For Damages according to proof;
2. For Interest as allowed by law;
3. For an order cancelling the transaction transferring Title to 1955 Ford Thunderbird Vin. # P5FH235863 to THE PERSON(S) CURRENTLY ON RECORD TITLE TO 1955 FORD THUNDERBIRD VIN. # P5FH235863 and restoring title to plaintiff;
4. For an order compelling the defendants to hold the subject 1955 FORD THUNDERBIRD VIN. # P5FH235863 in trust pending a final resolution of this case, and for an order compelling its transfer in title and its physical transfer to plaintiff;
5. For attorneys fees as allowed by law; and
6. For such other and further relief as the Court deems and just and proper.

Dated: 3/3/08

LAW OFFICES OF  
JOSEPH D. O'SULLIVAN

By: 

Joseph D. O'Sullivan  
Attorney for Plaintiff  
Nathan Gardner

### DEMAND FOR A JURY TRIAL

Plaintiff demands to have a trial by jury in the above matter.

Dated: 3/3/08

LAW OFFICES OF  
JOSEPH D. O'SULLIVAN

By: 

Joseph D. O'Sullivan  
Attorney for Plaintiff Nathan Gardner

JS 44 (Rev. 12/07) (and rev 1-08)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

## I. (a) PLAINTIFFS

NATHANIEL GARDNER

(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

SAN MATEO

(c) Attorney's (Firm Name, Address, and Telephone Number)

Joseph D. O'Sullivan  
LAW OFFICE OF JOSEPH D. O'SULLIVAN  
1500 20th St.  
SAN FRANCISCO, CA 94107

DEFENDANTS UNITED STATES DEPARTMENT OF JUSTICE; THE DRUG ENFORCEMENT ADMINISTRATION; The Person currently in Poss.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☒ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |   | PTF                                   | DEF                        |   | PTF                        | DEF                        |
|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input checked="" type="checkbox"/> 625 Drug Related Seizure		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract				<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 890 Other Statutory Actions
				<input type="checkbox"/> 891 Agricultural Acts
				<input type="checkbox"/> 892 Economic Stabilization Act
				<input type="checkbox"/> 893 Environmental Matters
				<input type="checkbox"/> 894 Energy Allocation Act
				<input type="checkbox"/> 895 Freedom of Information Act
				<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
				<input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 1331 AND 5 USC 201  
Brief description of cause:

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  
DEMAND \$

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE"

## IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD



**I. (c) PLAINTIFFS**

DEFENDANTS UNITED STATES DEPARTMENT OF  
JUSTICE THE DRUG ENFORCEMENT  
ADMINISTRATION & THE PERSONS

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Joseph D. O'Sullivan  
Law Office of Joseph D. O'Sullivan  
1500 20th St.  
San Francisco, CA 94117

**III. CITIZENSHIP OF PRINCIPAL PART IS** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        | DEF   |
|---|---------------------------------------|----------------------------|---|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated and Principal Place of Business in This State    |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign National  |

CONTRACT		TORTS		FORFEITURE/PENALTY		BANKRUPTCY		OTHER STATE	
110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	610 Agriculture	422 Appeal 28 USC 158	400 State Responsibility				
120 Marine	310 Airplane	362 Personal Injury—Med. Malpractice	620 Other Food & Drug	423 Withdrawal 28 USC 157	410 Antitrust				
130 Miller Act	315 Airplane Product Liability	365 Personal Injury Product Liability	625 Drug Related Seizure		430 Banks and Banking				
140 Negotiable Instrument	320 Assault, Libel & Slander	368 Asbestos Personal Injury Product Liability	630 Liquor Laws	<b>PROPERTY RIGHTS</b>	450 Commerce				
150 Recovery of Overpayment & Enforcement of Judgment	330 Federal Employers' Liability		640 R.R. & Truck	820 Copyrights	460 Deportation				
151 Medicare Act	340 Marine	<b>PERSONAL PROPERTY</b>	650 Airline Regs.	830 Patent	470 Racketeer Influenced and Corrupt Organizations				
152 Recovery of Defaulted Student Loans (Excl. Veterans)	345 Marine Product Liability	370 Other Fraud	660 Occupational Safety/Health	840 Trademark	480 Consumer Credit				
153 Recovery of Overpayment of Veterans' Benefits	350 Motor Vehicle	371 Truth in Lending	690 Other		490 Cable/Carry				
160 Stockholders' Suits	355 Motor Vehicle Product Liability	380 Other Personal Property Damage	<b>LABOR</b>	<b>SOCIAL SECURITY</b>	510 Selective Service				
190 Other Contract	360 Other Personal Injury	385 Property Damage Product Liability	710 Fair Labor Standards Act	861 HIA (1395f)	520 Securities/Commodities Exchange				
195 Contract Product Liability			720 Labor/Mgmt. Relations	862 Black Lung (23)	875 Customer Complaints 12 USC 3410				
196 Franchise			730 Labor/Mgmt. Reporting & Disclosure Act	863 DIWC/DIWI (405(g))	890 Other Statutory Acts				
			740 Railway Labor Act	864 SSID Title X VI	891 Agricultural Acts				
			790 Other Labor Litigation	865 RSI (405(g))	892 Economic Stabilization Act				
			791 Empl. Ret. Inc. Security Act		893 Environmental Matters				
					894 Energy Allocation Act				
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>		<b>FEDERAL TAX SUITS</b>	895 Freedom of Information Act				
210 Land Condemnation	441 Voting	510 Motions to Vacate Sentence		870 Taxes (U.S. Plaintiff or Defendant)	900 Appeal of Federal Determination Under Equal Justice to Justice				
220 Foreclosure	442 Employment	<b>Habeas Corpus:</b>	<b>IMMIGRATION</b>	871 IRS—Third Party 26 USC 760	950 Constitutionality of State Statutes				
230 Rent Lease & Ejectment	443 Housing Accommodations	530 General	462 Naturalization Application						
240 Torts to Land	444 Welfare	535 Death Penalty	463 Habeas Corpus - Alien Detainee						
245 Tort Product Liability	445 Amer. w/Disabilities - Employment	540 Mandamus & Other	465 Other Immigration Actions						
290 All Other Real Property	446 Amer. w/Disabilities - Other	550 Civil Rights							
	440 Other Civil Rights	555 Prison Condition							

☒ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 another district (specify)    ☐ 6 Multi district Litigation    ☐ 7 Judge Non-judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 28 USC 1331, 1332, 5 USC 201  
 Brief description of cause:

☐ CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint  
JURY DEMAND: ☐ YES ☒ NO

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE  
"NOTICE OF RELATED CASE".

☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

DATE 3-3-08

SIGNATURE OF ATTORNEY OF RECORD

REFER TO CIVIL L.R. 3-12 CONCERNING REQUIRE  
CE OF RELATED CASES)  
L.R. 3-2)  
SAN FRANCISCO/OAK  
SIGNATURE OF ATTORNEY OF RECORD



RECEIVED

2008 MAR 12 P 4: 34

RICHARD W. WIEKING, CLERK  
U.S. DISTRICT COURT  
NO. DIST. OF CA.